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JOHN T. FEY, C

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 765 MISC.

JOSEPH SHEFFIELD
Petitioner,

versus

STATE OF LOUISIANA
Respondent

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

M. E. CULLIGAN
Special Assistant Attorney General
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HARRY N. ANDERS
District Attorney
Fifth Judicial District

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To the Honorable the Chief Justice and the Honorables the Associate Justices of the Supreme Court of the United States

The State of Louisiana herein appearing through Jack P. F. Gremillion, Attorney General, M. E. Culligan, Assistant Attorney General, and Harry N. Anders, District Attorney, Fifth Judicial District of the State of Louisiana, with respect shows:

While petitioner has been duly sentenced to death and a stay order granted by the Supreme Court of Louisiana expires on May 27, 1957, no application has

been made to the Governor of the State of Louisiana for the issuance by him of a death warrant and no such application will be made until final determination by your Honors of petitioner's application. We desire this court to understand and be informed that while time is of the essence by reason of the fact that the Louisiana Supreme Court's stay order expires May 27, 1957, there is no necessity, in our opinion, for your Honors to grant any stay order, if any, until after your Honors have decided whether or not the petition of applicant and this opposition of the State of Louisiana having been duly considered.

The facts as stated in petitioner's petition pages 5 through 16 inclusive are correct except that we respectfully direct your Honors' attention that where reference is made on pages 11, 14 and 15 that Attorney Warren Hunt was appointed as petitioner's chief counsel and that Mr. Joseph S. Cuerriero, Attorney, was appointed as associate counsel, is not correct, as both of these highly learned, esteemed and experienced practitioners of criminal law, each of whom has had better than twenty (20) years of active experience in the trial of criminal cases both in the Louisiana District Courts, Louisiana Supreme Court and various Federal Courts, were appointed jointly as co-counsel to represent the defendant. As a matter of fact Mr. Warren Hunt is from Rayville, Louisiana, which is a

town within the jurisdiction of the Fifth Judicial District Court; Mr. Guerriero being a practitioner from Monroe, Louisiana, which is within the territorial jurisdiction of the Fourth Judicial District Court, Mr. Guerriero having voluntarily agreed to accept an appointment in this matter.

In addition, as is shown in the record itself all pleadings were filed jointly by Mr. Hunt and Mr. Guerriero, both of whom participated actively and energetically in the trial before the District Court and also filed their pleadings before the Louisiana Supreme Court including the application for rehearing and in addition Mr. Guerriero appears as counsel in the petition for the stay of execution as one of counsel of record, the said application being signed also by Attorneys Eugene Stanley and Leon Picou, Jr., however, in this petition for writ of certiorari to the Louisiana Supreme Court the only attorney now appearing before this court is Eugene Stanley of New Orleans, Louisiana, who is acting in this particular case as a private counsel and does not in any way represent the Louisiana State Bar Association herein. (This statement is made to clarify any possibility that your Honors might inadvertently infer from statement in the petition on page 7 thereof that the Louisiana Bar Association is now participating in this proceeding. In the trial or habeas corpus proceeding, none

of the attorneys, namely, Eugene Stanley, Leon Picou, Jr., or Charles I. Collins, represented the Louisiana State Bar Association, but on the contrary Mr. Leon Picou, Jr., was employed to represent petitioner, the other gentlemen joining with Mr. Picou in the trial of that proceeding).

We also invite your Honors' attention to the fact that while Mr. Hunt did not appear and argue the case before the Louisiana Supreme Court, Mr. Hunt had prepared and presented a typewritten brief which, however, had not been filed within fourteen (14) days prior to argument in accordance with the rules of that court. But despite that fact brief was permitted to be filed and Mr. Guerriero was permitted and did argue the entire case. As your Honors' know, it is not unusual that in cases before all Appellate Courts where there are co-counsel even before your august body, one of the counsel may not appear and the other counsel proceeds to present argument or is present in person and does not present argument or, sometimes the counsel divides the time allotted for argument between them in accordance with the rules of court, it being universally accepted by all Appellate Courts, both of the States and of the United States that the presentation of argument and division of time is a matter within the sound discretion of the various counsel in the case, limited by the rules of court as

to the number of counsel that may present argument. In similar fashion had Mr. Hunt appeared and not Mr. Guerriero, the same, in our opinion, frivolous objections and contentions could still have been made by the present counsel for petitioner. There is nothing in the record to even remotely indicate that Mr. Hunt abandoned petitioner but on the very contrary, as your Honors will note, Mr. Hunt and Mr. Guerriero filed the application for rehearing after the decision had been handed down by the Louisiana Supreme Court.

In opposition to the specification of errors which commences on page 17 of the petition, Paragraph I(a) is simply a conclusion of the pleader. The opinion of the Louisiana Supreme Court directly refutes such conclusion.

Paragraph I(b) is again merely a conclusion of the pleader which he again reiterates under paragraph III.

Paragraph I(c) states that the Supreme Court of Louisiana erred in refusing to set aside the action of the trial judge overruling a challenge for cause filed by petitioner to prospective juror, Roy A. Stewart, it being alleged the answers of Mr. Stewart made impossible for Mr. Stewart to be a fair and impartial juror. We specifically direct your Honors' attention to the fact that Roy A. Stewart was pre-emptorily

challenged by defense counsel **and did not serve as a member of the jury which tried petitioner.** This is borne out by the minutes of the court and the bill of exception taken by defense counsel shows that they did pre-emptorily challenge Mr. Stewart.

Paragraph I(d) states the Supreme Court of Louisiana erred in denying a challenge for cause to a prospective juror, Walter Huff. Again we desire to direct your Honors' attention that Mr. Walter Huff in similar fashion to Mr. Stewart **did not serve as a member of the jury which tried petitioner.** Mr. Huff also was pre-emptorily challenged by defense counsel as is reflected by the minutes of the court and by the bill of exception reserved by defense counsel.

Paragraph I(e). Again petitioner states that the Louisiana Supreme Court erred in refusing to set aside a challenge for cause against a prospective juryman, Jesse J. Hatton. Again we direct your Honors' attention to the fact that as in the cases of Mr. Stewart and Mr. Huff, Mr. Hatton also **did not serve as a member of the trial jury.** Mr. Hatton was pre-emptorily challenged by defense counsel as is reflected by the minutes and the bill of exception reserved by defense counsel.

In support of the above, for your Honors' quick reference, there is listed below the names of the twelve (12) jurymen and the alternate juryman who were

finally selected and before whom trial of petitioner was had:

Eugene Sturdivant
Joe Thornhill
Marvin W. Hammett
John Gray
Harold H. Sims
Burwin Curry
George D. Cupit
Elton Bryan
Norman Wells
J. D. Killian
Abe Solomon
J. A. McGraw
Kenneth Mason (Alternate)

We therefore respectfully request that the last paragraph on page 19 of petitioner's petition be order stricken from the petition as the said paragraph does not reflect clearly the situation as borne out by the record and unquestionably is an error by petitioner's counsel as the true facts are directly contrary thereto.

Insofar as Paragraph II of petition is concerned, in paragraph 1 thereof it is alleged that the testimony on the trial of habeas corpus proceeding shows the deceased was attempting to make an unlawful arrest of petitioner for a misdemeanor committed outside of his presence without a warrant. We respect-

fully disagree that any such conclusion can be drawn from the testimony referred to. There is nothing contained in the record of the trial of this case before the Louisiana District Court to indicate that the deceased was making any attempt to make an arrest lawful or otherwise, as he was shot before he had any such opportunity as is shown by the written confession of the defendant which is in the record.

As to the second paragraph of Paragraph II that Mr. Warren Hunt, one of the co-counsel in this case, abandoned petitioner on the hearing of his case before the Louisiana Supreme Court, there is nothing in the record of the Louisiana Supreme Court showing any such abandonment, but on the contrary, as stated supra, Mr. Hunt prepared brief, duly filed the same, co-counsel Guerriero argued the case and Mr. Hunt and Mr. Guerriero filed timely application for rehearing. The fact that Mr. Hunt became involved for failing to file an income tax return and plead guilty in the United States District Court to such violation is certainly irrelevant and immaterial as nowhere in the petittion has there been shown that Mr. Hunt and Mr. Guerriero did not do their full duty to petitioner during the entire trial of this case both before the District Court and the Louisiana Supreme Court nor has any charge been made in the petition of any in-

efficiency or laxity by either of these two gentlemen.

Paragraph III of the petition alleges that the State of Louisiana lost the right to retry petitioner when it permitted more than six (6) months to elapse from the date of the decree of Judge Dawkins, United States District Court Judge, in granting petitioner the writ of habeas corpus. In answer to this paragraph we quote from the decisions of the Louisiana Supreme Court:

> "The State contends that the said judgment was not final until such time as it had exhausted its recourse to the appellate Federal courts, and that the finality of the said judgment or the writ of habeas corpus became final on December 12, 1955, the date on which the Supreme Court of the United States denied the State of Louisiana leave to file a petition for writ of certiorari in that Court; that notwithstanding this fact, the State, in an abundance of caution applied to the Federal court for an extension of time in which to try the said defendant, which time was extended for 90 days, commencing January 18, 1956.
>
> To support the contention that Judge Ben C. Dawkins, Jr., had no authority to grant said extension of time, defendant cites the provision of 28 U.S.C.A., Section 2243, which section of the United States Code specifically refers to the issuance of the writ of habeas corpus and provides:
>
> 'The court shall summarily hear and determine

the facts, and dispose of the matter as law and justice require.'

We find no law, and the defendant has failed to cite any law or jurisprudence to sustain his position that this Codal Article of the United States Code prohibits the order granting the extension of time herein complained of. It is our opinion that by virtue of the power granted by said Article, the United States District Court for the Western District of Louisiana had a right to dispose of the matter presented in the habeas corpus proceeding by fixing a time limit within which the accused must be retried or discharged, and, further, to amend said order extending said time limit, as within his discretion law and justice require. In compliance with said order, the defendant herein was brought to trial on March 19, 1956, within the time limit, as extended."

We have also attached hereto, marked Appendix I, a letter from Eugene Stanley, Attorney for petitioner, in the habeas corpus proceeding and now the attorney for petitioner before your Honors, dated December 21, 1955, addressed to Honorable Harry N. Anders, District Attorney, which is self-explanatory, and from which your Honors will note copy of this letter was sent to Honorable Ben C. Dawkins, Jr., Judge, in which Mr. Stanley at that time in interpreting Judge Dawkins' order felt "that the six (6) months mentioned in the judgment of the lower court only commences to run from December 12, 1955 which

allows you until June 12, 1956", and this case was actually tried in the month of March 1956.

In Paragraph IV of the petition counsel states that, and we quote:

> "Being actuated by a sense of public duty toward a penniless defendant, so that this defendant can be given the benefit of every legal review to which he is entitled, counsel respectfully submits this application."

It is to be noted that Mr. Stanley first appeared in this case in the habeas corpus preceeding in December, 1954 and did not take any action in the Federal Court against Judge Dawkins extending the time for hearing nor did he volunteer his services in the second trial in the District Court nor volunteer his services when appeal was taken to the Louisiana Supreme Court.

ARGUMENT

It is respectfully submitted that the unanimous opinion rendered by the Louisiana Supreme Court is correct on every essential point which was raised by the defendant. The bill of exception No. 1, which was reserved to the overruling of a motion for a change of venue, as is shown by the opinion rendered by Associate Justice Simon, shows that there was no evidence or bias, prejudice or inflamed passion such as would violate any of the constitutional and inviolate rights of the accused. As is pointed out in the opinion almost

2½ years had elapsed between the time of the crime charged and that of the trial. The Louisiana Supreme Court very carefully weighed the bills of exception 2, 3 and 4 which were reserved to the ruling of the trial judge refusing to sustain challenges for cause of the prospective jurymen, namely; Roy A. Stewart, Walter Huff and Jesse J. Hatton and shows that the ruling of the trial court was correct in overruling the challenges for cause even if these gentlemen had actually served as jurymen on the trial and which, as we have shown above, did not occur, as all three of these gentlemen had been pre-emptorily challenged and did not serve.

Bill of exception No. 5 was also carefully scrutinized by the Louisiana Supreme Court which bill was reserved to the overruling of the plea to the jurisdiction of the Fifth Judicial District Court based on the contention that Federal Judge Dawkins was without authority to amend his original judgment. As is stated by the Supreme Court of Louisiana in its decision they could find no law nor did the defendant cite any law to them nor has defendant in this petition cited any showing that Judge Dawkins had no such authority and in addition counsel made no complaint to any Federal Appellate Court that Judge Dawkins was without such authority. The Louisiana Supreme Court also carefully considered Bills of Exception 6, 7, 8, 9, 10 and 11 on

which rulings no complaint has been made in the instant petition.

We also call your Honors' attention to the fact that in the application for rehearing filed in the Louisiana Supreme Court by counsel of record, Mr. Warren Hunt and Mr. Joseph S. Guerriero, admit the Louisiana Supreme Court's opinion was right on all of the bills of exception, excepting Bills No. 1 and 5, which have hereinabove been discussed.

We, therefore, believe that petitioner's petition is without merit and the relief sought should be denied.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State of Louisiana

M. E. CULLIGAN
Special Assistant Attorney General
State of Louisiana

HARRY N. ANDERS
District Attorney
Fifth Judicial District

APPENDIX NO. 1

EUGENE STANLEY
Attorney at Law
Whitney Building
New Orleans

December 21, 1955

Hon. Harry N. Anders
District Attorney
Fifth Judicial District
Winnsboro, Louisiana

Dear Mr. Anders:

I beg to acknowledge yours of December 19, enclosing original and copy of application to the District Judge by defendant and appellant, to amend and extend original judgment in the matter of United States ex rel, Joseph Sheffield vs. Hiram Waller, Sheriff, No. 4821, U. S. District Court, Western District of Louisiana, Monroe Division.

Since talking to you the other day and giving the matter some additional thought, as I informed you over the telephone, it was my appreciation of the Judgment that the term "within six months from the finally effective date of the decree to be entered herein" meant six months from the date of the final judgment by the Court of last resort.

In other words, since the United States Supreme Court on December 12, 1955, denied the motion for

leave to file petition for writ of certiorari, I was and am of the opinion that the six months mentioned in the judgment of the lower court only commences to run from December 12, 1955, which allows you until June 12, 1956 to commence a new prosecution.

After careful and conscientious consideration of the matter, I have concluded that I cannot sign the certificate set out on the second page of your application, for should I be in error as to when the six month period actually commenced, my signing might be considered as a waiver of a legal right which otherwise would be available to Sheffield on his second trial.

I am returning you the original of your application (unsigned) and I have retained the carbon copy which you sent to me.

I am taking the liberty of sending a copy of this letter to Hon. Ben C. Dawkins, Jr., United States District Judge.

I remain, with kindest personal regards,

Very truly yours,

(Original Signed) Eugene Stanley

ES:md

cc. Hon. Ben C. Dawkins, Jr.

CERTIFICATE

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Before me, the undersigned authority, personally came and appeared, M. E. Culligan, who, being by me first duly sworn, deposes and says:

That he is one of the attorneys of record in the above entitled action; that all of the allegations made are true and correct, and that he has served a copy of same by mailing it to attorney of the petitioner, Mr. Eugene Stanley, to his office in the Whitney Building, City of New Orleans, Louisiana, by regular United States mail, postage prepaid, on this date.

M. E. CULLIGAN

Sworn to and subscribed before me on this 24th day of May, 1956.

ESTHER A. KELLY,
Notary Public

Members of the United States Supreme Court Bar:

Jack P. F. Gremillion,
Attorney General
Capitol Building
Baton Rouge, Louisiana

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